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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/715,724	09/16/96	WILSON	P 6000

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EXAMINER

MORRIS, T

ART UNIT

PAPER NUMBER

1314

DATE MAILED: 05/09/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/715,724

Applicant(s)

Wilson et al.

Examiner

Terrel Morris

Group Art Unit

1314



☒ Responsive to communication(s) filed on Oct 31, 1996

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-15 and 17-19 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-15 and 17-19 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 & 3

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1314

1. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

There is no antecedent basis for "said non-polar functional groups". Further, since there is no discussion of such anywhere in the claimed invention, it is not possible to compare claim 6 with the prior art.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7-12, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin, US 5,447,794.

The patent is directed to sheath-core polyamide filaments useful in carpet constructions that are resistant to staining by coffee and acid dyes common in food beverages. The sheath component is comprised of nylon 6,12; nylon 12; nylon 6,10 or nylon 11 and the core may be nylon 6,6; nylon 6; or copolymers thereof (Title; Abstract; and column 1, lines 5-11 & 42-64). The weight ratio of sheath component to core component is in the range of 10:90 to 80:20, preferably 10:90 to 50:50 (column 1, lines 35-42).

The staining tests provided by the patent are not performed in the same manner as those instantly claimed. As such, it is not possible to compare the values of staining given by the patent

Art Unit: 1314

with those specified in the claims. Also, the patent does not discuss "percent steam heatsetting shrinkage values" or amine end-group concentration of the sheath component. However, the mere recitation of properties absent in the prior art does not necessarily predicate patentability especially where, as here, the prior art teaches Applicant's preferred embodiment, i.e., a carpet made from a sheath-core filament with a polyamide 6/12 or 6/10 sheath and a polyamide 6 or a polyamide 6/6 core. Since the chemistry and structure of the carpet claimed is clearly and completely anticipated by the Lin patent, the Examiner finds the properties claimed in addition thereto to be inherent to the carpets of Lin. This reasoning is based on the fact that the properties claimed are dependent upon the materials from which they are made and the same materials are used for Applicant's preferred embodiments as for Lin's preferred embodiments.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin as set forth above, in view of the recognized state of the art of carpet fibers.

Lin does not discuss filament cross-sectional shape. One example does mention round. However, Applicant is given Official Notice that in this art it is more preferred to have non-round cross-sectional shapes, particularly trilobal cross-sections, even in multi-component carpet


Art Unit: 1314

filaments for the purposes of increasing bulk among other reasons. Due to this knowledge, it would have been instantly obvious to one of ordinary skill in the art to practice the conceptual invention of Lin with trilobal filaments, motivated by the expectation of providing a higher quality carpet due to increased yarn bulk.

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.
7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Terrel Morris whose telephone number is (703) 308-2414. The Examiner can normally be reached Monday through Thursday from 7:30 am to 4:30 pm and on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Marion McCamish, can be reached at (703) 308-3961. The fax phone number for this Group is (703) 305-5436.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 2351.


Terrel Morris
Primary Examiner
Art Unit: 1314
May 6, 1997